

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY

SHAUNNE OLSON,

Plaintiff,

-vs-

Case No: 4:06-CV-0154-SEB-WGH

HORNBLOWER MARINE SERVICES, INC.,

Defendant.

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**PLAINTIFF'S MOTION TO FILE AFFIDAVIT OF SHAUNNE OLSON DATED  
DECEMBER 14, 2007 IN SUPPORT OF PLAINTIFF'S MOTION FOR MAINTENANCE  
AND CURE**

NOW COMES Plaintiff, by and through counsel undersigned, and in support of

Plaintiff's Motion to File Affidavit of Shaunne Olson, states as follows:

1. This Honorable Court held an Evidentiary Hearing on November 8, 2007, with respect to Plaintiff's Motion for Maintenance and Cure.
2. At the time of the Evidentiary Hearing, Defendant for the first time stated that their defense to paying Plaintiff's maintenance and cure was that Plaintiff wilfully concealed a disabling condition and/or did not disclose prior medical conditions on a pre-employment physical exam, etc.
3. Plaintiff counsel objected to this defense at the time of the Evidentiary Hearing, as Defendant had never filed this defense in any other pleadings on record in this case, nor was it ever alleged as an affirmative defense.
4. This Honorable Court stated that they would allow testimony with respect to Defendant's defense at the time of the Evidentiary Hearing and would allow Plaintiff a chance to rebut same including taking the deposition of Dr. Florek.

5. In addition, at this time, Plaintiff states that he would like to introduce the Affidavit of Shaunne Olson dated December 14, 2007, to rebut Defendant's 11<sup>th</sup> hour defense which Plaintiff still objects to.

6. Counsel states that if this Honorable Court does not grant Plaintiff's Motion to Allow the Filing of the Affidavit in Support of Plaintiff's Motion for Maintenance and Cure, Plaintiff will suffer irreparable harm and prejudice. For financial reasons, Plaintiff was not present himself at the time of the Evidentiary Hearing, and Plaintiff counsel had no way of knowing that Defendant was going to present a new defense at the time of the Evidentiary Hearing so as to have Plaintiff available to testify and/or rebut the defense.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion to Allow the Filing of the Affidavit of Shaunne Olson in Support of Plaintiff's Motion for Maintenance and Cure.

O'BRYAN BAUN COHEN KUEBLER

/s/ Howard M. Cohen

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DATED: December 17, 2007

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the 17<sup>th</sup> day of December, 2007 the foregoing was filed using the Court's ECF Filing System and will be served on counsel for Defendant, Stephanie R. Miller, via first class mail postage prepaid, upon the following attorney of record:

Stephanie R. Miller, Esq.  
One Riverfront Plaza  
Suite 602  
Louisville, KY 40202

/s/ Howard M. Cohen

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